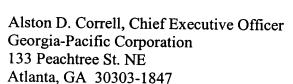


March 3, 2005

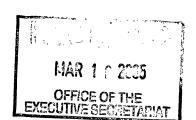
VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:

Kelly Wolff, Vice President and Wauna Mill Manager Fort James Operating Company, Wauna Mill 92326 Taylorsville Road Clatskanie, OR 97016-8264

Carol Whitaker Georgia-Pacific Corporation 349 NW 7th Avenue Camas, WA 98607-2042



Georgia-Pacific Corporation c/o CT Corporation System, Registered Agent 388 State Street Suite 420 Salem, OR 97301



Re: Sixty-Day Notice of Intent to Sue for Violations of Clean Water Act Permit Number 101172

Dear Mr. Wolff, Ms. Whittaker, Mr. Correll and other agents of Georgia-Pacific Corp.,

This letter, written on behalf of Columbia Riverkeeper and the Northwest Environmental Defense Center ("Notifiers"), gives you notice pursuant to Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), that the Fort James Wauna Mill ("Fort James") located at 92326 Taylorsville Road Clatskanie, Oregon, owned and operated by the Georgia-Pacific Corporation, has violated and continues to violate the discharge effluent limitations contained in National Pollutant Discharge Elimination System Permit number 101172 ("NPDES permit") for aluminum and total suspended solids, at Outfall 003 located at Columbia River mile 41.67, and has violated and continues to violate Oregon water quality standards for turbidity as a result of the discharge from Outfall 003. The person or persons responsible for these violations include

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but are not limited to Chief Executive Officer of Georgia-Pacific Corporation Alston Correll, Fort James Wauna Mill Plant Manager Kelly Wolff, Georgia-Pacific Environmental Compliance Officer Carol Whittaker, other executive decision makers, and any other agent of the Fort James Wauna Mill or the Georgia-Pacific Corporation responsible for directing or otherwise facilitating the effluent violations cited within this notice.

Due to the past and ongoing violations described herein, Notifiers intend to file a civil action for penalties and/or injunctive relief under the Clean Water Act's citizen suit provision in the Federal District Court of Oregon sixty days after service of this notice. 33 U.S.C. §§ 1365(a)(1) & (b)(1)(A). Notifiers are organizations that represent members who actively use and enjoy the Columbia River and the Columbia River Estuary and who are interested in protecting and restoring the natural resources of the Columbia River, including the resident and anadromous aquatic life and wildlife that depend on the estuarine and river ecosystems.

The continued discharge of pollutants presents a serious threat to the physical, biological and chemical integrity of the Columbia River, a river already exceeding protective water quality standards for many pollutant parameters. Discharges that exceed permit effluent limitations established pursuant to the Clean Water Act and its implementing regulations serve only to compound this already serious situation, jeopardizing the Columbia River and its biological communities. Notifiers' members hold an interest in protecting the Columbia River that is directly and adversely affected by the past and continuing violations at Fort James Wauna Mill Outfall 003. It is to protect these interests that Notifiers provide notice to Fort James Wauna Mill of the intent to file suit for past and ongoing violations of permit effluent limitations.

I. BACKGROUND

Fort James Wauna Mill withdraws water from the Columbia River for use in its production process. After withdrawal, but prior to input into the production process, Fort James treats and clarifies the river water using filters to trap pollutants, debris and other materials. The filters are routinely cleaned by forcing water through the filters counter to the direction of flow during normal operations to remove trapped pollutants and debris. The flushed water with the trapped pollutants and debris from the filters is commonly referred to as filter backwash. The filter backwash wastewater carries high amounts of pollutants and debris concentrated by the filters. Due to the high concentration of pollutants and debris in filter backwash, the Environmental Protection Agency specifically lists filter backwash as a pollutant in regulations implementing the Clean Water Act. 40 C.F.R. § 122.2. Fort James discharges untreated filter backwash at a rate of approximately 2.2 million gallons per day through Outfall 003 into the Columbia River at river mile 41.67.

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In September 2003, DEQ renewed Fort James Wauna Mill's NPDES permit, issuing permit number 101172. Pursuant to the Clean Water Act, it is illegal to discharge any pollutant from a point source unless authorized by a NPDES permit. 33 U.S.C. § 1311(a); 33 U.S.C. § 1342(a). Because federal regulations specifically list filter backwash as a pollutant, any discharge of filter backwash must be authorized by and consistent with a NPDES permit. Permit Number 101172 imposes effluent limitations at Outfall 003 for the pollutants aluminum, total residual chlorine, lead, zinc, pH and total suspended solids. 33 U.S.C. § 1311(b). Fort James has violated and continues to violate some of these limitations.

II. FORT JAMES WAUNA MILL'S ONGOING CLEAN WATER ACT VIOLATIONS.

Since September 2003, when DEQ first authorized the discharge of filter backwash wastewater, Fort James Wauna Mill has violated and continues to violate permit effluent limitations for aluminum and total suspended solids ("TSS") at Outfall 003. Pursuant to the Citizen Suit Provision of the Clean Water Act, Notifiers intend to initiate suit for these NPDES permit violations and to seek injunctive relief and/or the imposition of civil penalties, as well as costs, attorney's fees and litigation expenses. 33 U.S.C. §§ 1365(a)(1) & (d). Failure to comply with permit effluent limitations and violations of state water quality standards are clear violations of the Clean Water Act and subject to civil penalties up to \$32,500 per violation per day. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Based on the monthly Department Monitoring Reports submitted by Fort James Wauna Mill to DEQ, Notifiers identify the following permit violations:

A. <u>Documented Permit Effluent Limitation Violations</u>

ALUMINUM MONTHLY AVERAGE VIOLATIONS

The monthly average effluent limitations for aluminum discharged from Outfall 003 is 1.85 mg/L. Permit No. 101172, Schedule A, Condition 3. Fort James Wauna Mill has violated this limitation as documented in the following table:

Monitoring Period	A	Date of Violation	Permit Limit	Sample
Oct. 15-31, 2003	December 8, 2003	Oct. 15-31, 2003	1.85 mg/L	8.60 mg/L
November 2003	January 12, 2004	November 2003	1.85 mg/L	9.52 mg/L
December 2003	January 13, 2004	December 2003	1.85 mg/L	31.45 mg/L
January 2004	February 20, 2004	January 2004	1.85 mg/L	13.81 mg/L
February 2004	March 29, 2004	February 2004	1.85 mg/L	24.00 mg/L
March 2004	April 22, 2004	March 2004	1.85 mg/L	8.69 mg/L
April 2004	June 2, 2004	April 2004	1.85 mg/L	10.85 mg/L
May 2004	June 22, 2004	May 2004	1.85 mg/L	12.80 mg/L

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June 2004	July 29, 2004	June 2004	1.85 mg/L	16.20 mg/L
July 2004	August 26, 2004	July 2004	1.85 mg/L	15.90 mg/L
August 2004	September 21, 2004	August 2004	1.85 mg/L	12.90 mg/L
September 2004	Nov. 4, 2004	September 2004	1.85 mg/L	20.27 mg/L
October 2004	Nov. 24, 2004	October 2004	1.85 mg/L	20.27 mg/L

ALUMINUM DAILY MAXIMUM VIOLATIONS

The daily maximum effluent limitation for aluminum discharged from Outfall 003 is 2.43 mg/L. Permit No. 101172, Schedule A, Condition 3. Fort James has violated this effluent limitation as documented in the following table:

Monitoring Period	Date of Monitoring Report	Date of Violation	Permit Limit	Sample
Oct. 15-31, 2003	December 8, 2003	*	2.43 mg/L	10.90 mg/L
November 2003	January 12, 2004	*	2.43 mg/L	12.40 mg/L
December 2003	January 13, 2004	*	2.43 mg/L	57.80 mg/L
January 2004	February 20, 2004	*	2.43 mg/L	21.80 mg/L
February 2004	March 29, 2004	*	2.43 mg/L	45.30 mg/L
March 2004	April 22, 2004	*	2.43 mg/L	9.99 mg/L
April 2004	June 2, 2004	*	2.43 mg/L	11.30 mg/L
May 2004	June 22, 2004	*	2.43 mg/L	14.10 mg/L
June 2004	July 29, 2004	*	2.43 mg/L	16.60 mg/L
July 2004	August 26, 2004	*	2.43 mg/L	17.20 mg/L
August 2004	September 21, 2004	*	2.43 mg/L	14.60 mg/L
September 2004	November 4, 2004	*	2.43 mg/L	32.00 mg/L
October 2004	November 24, 2004	*	2.43 mg/L	32.00 mg/L

^{*} The monthly discharge monitoring reports do not specify the date on which the aluminum samples were collected. As a result, Notifiers do not know and cannot state the exact dates of violation in this notice. Fort James is in the best position to identify the exact dates on which it collected the samples reported above. Notifiers intend to obtain this information through discovery. Based on the information contained in Fort James' discharge monitoring reports, and based on the consistency of daily maximum violations and the excessively high monthly averages, Notifiers allege in good faith that Fort James Wauna Mill has violated and continues to violate daily maximum limits for aluminum each and every day of discharge.

TOTAL SUSPENDED SOLIDS MONTHLY AVERAGE VIOLATIONS

The monthly average effluent limitation for Total Suspended Solids discharged from Outfall 003 is 50 mg/L. Permit 101172, Schedule A, Condition 3. Fort James Wauna Mill has violated this effluent limitation as documented in the following table:

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Monitoring Period	Date of Monitoring Report	Date of Violation	Permit Limit	Sample
Oct. 15-31, 2003	December 8, 2003	Oct. 15-31, 2003	50 mg/L	321 mg/L
November 2003	January 12, 2004	November 2003	50 mg/L	332 mg/L
December 2003	January 13, 2004	December 2003	50 mg/L	526 mg/L
January 2004	February 20, 2004	January 2004	50 mg/L	614 mg/L
February 2004	March 29, 2004	February 2004	50 mg/L	990 mg/L
March 2004	April 22, 2004	March 2004	50 mg/L	532 mg/L
April 2004	June 2, 2004	April 2004	50 mg/L	451 mg/L
May 2004	June 22, 2004	May 2004	50 mg/L	564 mg/L
June 2004	July 29, 2004	June 2004	50 mg/L	809 mg/L
July 2004	August 26, 2004	July 2004	50 mg/L	585 mg/L
August 2004	September 21, 2004	August 2004	50 mg/L	821 mg/L
September 2004	November 4, 2004	September 2004	50 mg/L	844 mg/L
October 2004	November 24, 2004	October 2004	50 mg/L	1860 mg/L

TOTAL SUSPENDED SOLIDS DAILY MAXIMUM VIOLATIONS

The daily maximum effluent limitation for Total Suspended Solids (TSS) discharged from Outfall 003 is 75 mg/L. Permit 101172, Schedule A, Condition 3. Fort James Wauna Mill has violated this effluent limitation as documented in the following table:

Monitoring Period	Date of Monitoring Report	Date of Violation	Permit Limit	Sample
Oct. 15-31, 2003	December 8, 2003	October 15, 2003	75 mg/L	252 mg/L
Oct. 15-31, 2003	December 8, 2003	October 22, 2003	75 mg/L	232 mg/L
Oct. 15-31, 2003	December 8, 2003	October 20, 2003	75 mg/L	480 mg/L
November 2003	January 12, 2004	November 5, 2003	75 mg/L	316 mg/L
November 2003	January 12, 2004	November 12, 2003	75 mg/L	258 mg/L
November 2003	January 12, 2004	November 19, 2003	75 mg/L	169 mg/L
November 2003	January 12, 2004	November 25, 2003	75 mg/L	586 mg/L
December 2003	January 13, 2004	December 1, 2003	75 mg/L	220 mg/L
December 2003	January 13, 2004	December 9, 2003	75 mg/L	540 mg/L
December 2003	January 13, 2004	December 17, 2003	75 mg/L	830 mg/L
December 2003	January 13, 2004	December 23, 2003	75 mg/L	688 mg/L
December 2003	January 13,2004	December 31, 2003	75 mg/L	354 mg/L
January 2004	February 20, 2004	January 7, 2004	75 mg/L	663 mg/L
January 2004	February 20, 2004	January 15 2004	75 mg/L	768 mg/L
January 2004	February 20, 2004	January 21, 2004	75 mg/L	454 mg/L

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January	2004	February 20, 2004	January 29, 2004	75 /7	T = = = =
Februar		March 29, 2004	January 28, 2004	75 mg/L	570 mg/L
Februar		March 29, 2004	February 4, 2004	75 mg/L	2310 mg/L
Februar		March 29, 2004	February 13, 2004	75 mg/L	518 mg/L
Februar			February 18, 2004	75 mg/L	550 mg/L
March 2		March 29, 2004	February 27, 2004	75 mg/L	580 mg/L
March 2		April 22, 2004	March 3, 2004	75 mg/L	742 mg/L
		April 22, 2004	March 12, 2004	75 mg/L	682 mg/L
March 2		April 22, 2004	March 16, 2004	75 mg/L	459 mg/L
March 2		April 22, 2004	March 23, 2004	75 mg/L	386 mg/L
March 2		April 22, 2004	March 29, 2004	75 mg/L	390 mg/L
April 20		June 2, 2004	April 8, 2004	75 mg/L	480 mg/L
April 20		June 2, 2004	April 13, 2004	75 mg/L	475 mg/L
April 20		June 2, 2004	April 20, 2004	75 mg/L	450 mg/L
April 20		June 2, 2004	April 27, 2004	75 mg/L	397 mg/L
May 200		June 22, 2004	May 4, 2004	75 mg/L	477 mg/L
May 200		June 22, 2004	May 14, 2004	75 mg/L	762 mg/L
May 200		June 22, 2004	May 20, 2004	75 mg/L	372 mg/L
May 200		June 22, 2004	May 25, 2004	75 mg/L	644 mg/L
June 200		July 29, 2004	June 2, 2004	75 mg/L	984 mg/L
June 200		July 29, 2004	June 8, 2004	75 mg/L	598 mg/L
June 200		July 29, 2004	June 15, 2004	75 mg/L	892 mg/L
June 200)4	July 29, 2004	June 24, 2004	75 mg/L	760 mg/L
July 200	4	August 26, 2004	July 1, 2004	75 mg/L	566 mg/L
July 200	4	August 26, 2004	July 6, 2004	75 mg/L	682 mg/L
July 200	4	August 26, 2004	July 13, 2004	75 mg/L	532 mg/L
July 200	4	August 26, 2004	July 22, 2004	75 mg/L	534 mg/L
July 200	4	August 26, 2004	July 27, 2004	75 mg/L	612 mg/L
August 2	2004	September 21, 2004	August 5, 2004	75 mg/L	444 mg/L
August 2	2004	September 21, 2004	August 12, 2004	75 mg/L	666 mg/L
August 2	2004	September 21, 2004	August 17, 2004	75 mg/L	1610 mg/L
August 2		September 21, 2004	August 24, 2004	75 mg/L	564 mg/L
Septemb		Nov. 4, 2004	September 1, 2004		
Septemb		Nov. 4, 2004	September 8, 2004	75 mg/L	714 mg/L
Septemb		Nov. 4, 2004	September 15, 2004	75 mg/L	362 mg/L
Septemb		Nov. 4, 2004	September 24, 2004	75 mg/L	554 mg/L
Septemb		Nov. 4, 2004	September 29, 2004	75 mg/L	1350 mg/L
October 2		Nov. 24, 2004	October 5, 2004	75 mg/L	1240 mg/L
October		Nov. 24, 2004	October 12, 2004	75 mg/L	698 mg/L
2 2 . 3 0 0 1 /		2101. 27, 2007	OCIOUCI 12, 2004	75 mg/L	2300 mg/L

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October 2004	Nov. 24, 2004	October 19, 2004	75 mg/L	2570 mg/L
October 2004	Nov. 24, 2004	October 26, 2004	75 mg/L	1870 mg/L

On October 14, 2004, Notifiers conducted an independent sampling of Columbia River water near the point of discharge at Outfall 003. The TSS concentration of the sample collected on that date was 150 mg/L. Notifiers intend to use this, and future sampling data as further evidence of past and continuing violations of the TSS effluent limitation.

Based on the information contained in Fort James' discharge monitoring reports, and based on the consistency of daily maximum violations and the excessively high monthly averages, Notifiers allege in good faith that Fort James Wauna Mill has violated and continues to violate daily maximum limits for TSS each and every day of discharge, other than those for which Fort James can prove otherwise.

B. <u>Violations of Oregon Water Quality Standard for Turbidity</u>

In addition to the permit violations listed above, Fort James Wauna Mill has violated and continues to violate Oregon state water quality standards for turbidity. Raj Kapur, a former permit writer for DEQ who drafted Permit No. 101172, stated that the effluent limitation for TSS acts as a direct proxy for compliance with the turbidity water quality standard. Under the view advanced by DEQ and permit writer Raj Kapur, Fort James' compliance with TSS permit limits will result in compliance with turbidity water quality standards. Conversely, a failure to comply with TSS limitations will result in turbidity levels that violate water quality standards.

Fort James' NPDES permit requires Fort James to comply with water quality standards. As stated in Permit No. 101172, "except as provided in Oregon Administrative Rule (OAR) 340-045-0080, no wastes may be discharged and no activities may be conducted that violated Water Quality Standards as adopted in OAR 340-041-0205 except in the defined mixing zone." Permit No. 101172, Schedule A, Condition 4. The defined mixing zone for Outfall 003 "it that portion of the Columbia River within a radius of 100 feet from the point of discharge." *Id.* Based on the stated correlation between TSS and turbidity, Fort James Wauna Mill violates turbidity water quality standards each time it violates TSS limitations at Outfall 003. For each past and continuing violation of TSS permit limitations at Outfall 003, Notifiers allege and incorporate a violation of the turbidity water quality standard. *Northwest Env't Advocates v. City of Portland*, 56 F.3d 979, 988 (9th Cir. 1995) (holding that citizens have the right to enforce state water quality standards under the citizen suit provision of the Clean Water Act).

Pursuant to OAR 340-041-0205, a discharge violates water quality standards if it causes a 10% increase in river turbidity measured from a control point immediately upstream of the

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discharge. On October 14, 2004, Notifiers conducted an independent sampling of Columbia River water 125 feet from the point of discharge at Outfall 003. As noted above, this turbidity sample was taken well outside the assigned mixing zone, at a point where the discharge must comply with water quality standards. The results of the turbidity sampling showed turbidity readings as high as 28.2 Nephelometric Turbidity Units (NTUs). As measured from a control point immediately upstream, the 28.2 NTU sample represented a 726% increase in river turbidity. Notifiers intend to use this, and future sampling data as further evidence of past and continuing violations of turbidity water quality standards.

III. INJUNCTIVE RELIEF AND PENALTIES

Since DEQ issued Fort James NPDES Permit No. 101172 in September 2003, as demonstrated and alleged above, Fort James has violated aluminum and TSS effluent limitations and turbidity water quality standards each and every month and at levels greatly exceeding the permit limitations. Pursuant to the Clean Water Act failure to comply with permit effluent limitations or water quality standards constitutes a violation of the law punishable by civil penalties or, in cases of negligent or knowing violations, punishable by criminal penalties and imprisonment. 33 U.S.C. §§ 1319(c) & (d). Under the Clean Water Act, as adjusted for inflation by 40 C.F.R. § 19.4, Fort James is liable for civil penalties of up to \$32,500 per day for each permit and water quality standard violation. 33 U.S.C. § 1319(d).

Each monthly average violation corresponds to one violation for each day of that month. U.S. v. Smithfield Foods, Inc., 191 F.3d 516, 527 (4th Cir. 1999) ("each violation of a monthly average limit shall be treated as a violation for every day in the month with the violation occurred"). Furthermore, violations of daily maximum and monthly average limitations for the same pollutant are counted as separate violations. Id. (exceedances of daily maximum limitations and monthly average limitations for the same substance can be counted as two separate violations for purposes of penalty assessment because a violation of one does not automatically result in a violation of the other). Notifiers therefore allege that Fort James Wauna Mill has violated and continues to violate four permit limitations and water quality standard each and every day effluent is discharged from Outfall 003. According to Notifiers' calculations, since issuance of the 2003 NPDES permit to the end of October 2004, Fort James Wauna Mill has violated the Clean Water 1750 separate times. With penalty assessments of up to \$32,500 per violation, Fort James faces a potential penalty liability of \$56,875,000.

Based on the routine and persistent occurrences of these violations, Notifiers hold a good faith and reasonable belief that the violations at Outfall 003 are ongoing violations and that Fort James Wauna Mill will continue to violate permit limitations and water quality standards in the future. Gwaltney of Smithfield v. Chesapeake Bay Foundation, 494 U.S. 49, 57 (1987). The

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reasonableness of this belief is further supported by a complete absence of any pollution controls, treatment technologies or management practices applied at Outfall 003 to reduce the amount of pollutants.

IV. PERSONS GIVING NOTICE

The full name, address and telephone number of the parties providing this notice:

Columbia Riverkeeper 721 NW 9th Avenue, Suite 300 Portland, OR 97209 (877) 252-6077

and

Northwest Environmental Defense Center 10015 S.W. Terwilliger Blvd. Portland, OR 97219 (503) 768-6673

V. ATTORNEYS REPRESENTING PERSONS GIVING NOTICE

The full name, address and telephone number of the attorneys representing the persons giving notice:

Plaintiff Columbia Riverkeeper represented by:

Brent Foster, OSB # 99263 2107 Rattler Ridge Road Mosier, Oregon 97040 (503) 238-1241

Plaintiff Northwest Environmental Defense Center represented by:

Melissa Powers, OSB # 02118
Pacific Environmental Advocacy Center
10015 SW Terwilliger Blvd.
Portland, Oregon 97219
(503) 768-6727

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VI. CONCLUSION

The notice provides sufficient information to identify the types of violations for which Notifiers intend to file suit, but may not cover all conceivable violations occurring at the Fort James Wauna Mill. If Notifiers discover violations not explicitly covered in this letter, Notifiers now place the Fort James Wauna Mill and Georgia-Pacific Corporation on notice that additional violations occurring or discovered after receipt of this letter will be incorporated into the suit to the extent permitted by law. Cmty. Ass'n for Restoration of the Env't v. Henry Bosma Dairy, 305 F.3d 943, 950-54 (9th Cir. 2002) (citizen Notifiers need not provide notice of each individual violation and can incorporate identifiable violations of the same nature that originate from the same source). Notifiers therefore strongly urge Fort James Wauna Mill and Georgia-Pacific Corporation to conduct a compliance audit to identify and correct additional permit violations and to otherwise assure compliance with state and federal laws and regulations.

If there is any part of this notice that you do not understand or if you wish to discuss any aspect of this notice or the underlying violations, please use the information provided below to contact us. If, within the sixty-day period provided by Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), and initiated by this notice letter, Fort James Wauna Mill or Georgia-Pacific Corporation remedies the violations described herein or ceases the actions leading to the violations please notify us immediately.

During the sixty (60) day notice period, Columbia Riverkeeper and NEDC will be available to discuss effective remedies and actions that might be taken to assure Fort James' compliance in the future with the CWA. If you wish to discuss any aspect of this notice or to discuss settlement of this matter prior to commencement of suit, please contact us. Otherwise we will file suit at the end of the sixty-day period initiated by this letter.

Sincerely.

Melissa Powers

Pacific Environmental Advocacy Center

10015 SW Terwilliger Blvd.

Portland, Oregon 97219

(503) 768-6727

Attorney for NEDC

Brent Foster

2107 Rattler Ridge Road

Mosier, Oregon 97040

(503) 238-1241

Attorney for Columbia Riverkeeper

Mr. Kelly Wolff Sixty Day Notice of Intent to Sue March 3, 2005 Page 11 of 11

IV. COPIES TO (via certified mail, return receipt requested):

Alberto Gonzalez, United States Attorney General United States Department of Justice 950 Pennsylvania Avenue Washington, DC 20530-0001

Chuck Clarke, EPA Region X Administrator United States Environmental Protection Agency, Region X 1200 6th Ave (RA-140) Seattle, WA 98101

Stephanie Hallock, Director Oregon DEQ Oregon Department of Environmental Quality 811 SW 6th Ave. Portland, OR 97204

Steve Johnson, Acting EPA Administrator Environmental Protection Agency Ariel Rios Building 1200 Pennsylvania Avenue, N.W. Washington, DC 20460 COLUMNICATION OF WEST AND COLUMN OF THE STATE OF THE STAT

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